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Joao Control & Monitoring Systems, LLC*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**JOAO CONTROL &
MONITORING SYSTEMS, LLC,**

Plaintiff,

v.

**CITY OF YONKERS, VEHICLE
TRACKING SOLUTIONS, LLC,**

Defendants,

and

**AMERICAN TRAFFIC
SOLUTIONS, INC.,**

Defendant-Intervenor.

ECF Case

Civil Action No. 1:12-cv-07734-KBF

JURY TRIAL DEMANDED

**PLAINTIFF JOAO CONTROL & MONITORING SYSTEMS, LLC'S ANSWER TO
DEFENDANT VEHICLE TRACKING SOLUTIONS, LLC'S COUNTERCLAIMS AND
THIRD-PARTY CLAIMS**

Plaintiff Joao Control & Monitoring System, LLC (“JC&MS” or “Plaintiff”) files this Answer to Defendant Vehicle Tracking Solutions, LLC’s (“VTS” or Defendant) Counterclaims and Third-Party Claims as filed on April 22, 2013 (Dkt. No. 39).

PARTIES

57. JC&MS admits to the allegations set forth in paragraph 57 of the Counterclaims.

58. Upon information and belief, JC&MS admits to the allegations set forth in paragraph 58 of the Counterclaims.

59. JC&MS admits to the allegations set forth in paragraph 59 of the Counterclaims.

JURISDICTION AND VENUE

60. JC&MS acknowledges that these Counterclaims are brought under the Declaratory Judgment Act and that Defendant seeks an adjudication that the ‘076 patent is not infringed, not valid, and/or not enforceable. However, JC&MS denies that Defendant is entitled to said relief.

61. JC&MS admits to the allegations set forth in paragraph 61 of the Counterclaims.

62. JC&MS admits to the allegations set forth in paragraph 62 of the Counterclaims.

ACTUAL CASE AND CONTROVERSY

63. JC&MS admits to the allegations set forth in paragraph 63 of the Counterclaims.

64. JC&MS admits to the allegations set forth in paragraph 64 of the Counterclaims.

65. JC&MS admits to the allegations set forth in paragraph 65 of the Counterclaims.

66. JC&MS denies the allegations set forth in paragraph 66 of the Counterclaims.

COUNT I
(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

67. JC&MS repeats and incorporates herein paragraphs 57 through 66 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

68. JC&MS denies the allegations set forth in paragraph 68 of the Counterclaims.

69. JC&MS denies the allegations set forth in paragraph 69 of the Counterclaims.

70. JC&MS denies the allegations set forth in paragraph 70 of the Counterclaims.

71. The allegations set forth in paragraph 71 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, JC&MS denies the allegations set forth in paragraph 71 of the Counterclaims.

72. JC&MS acknowledges that VTS requests a declaratory judgment but denies that Defendant is entitled to said relief.

COUNT II
(DECLARATORY JUDGMENT OF PATENT INVALIDITY)

73. JC&MS repeats and incorporates herein paragraphs 57 through 72 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

74. JC&MS denies the allegations set forth in paragraph 74 of the Counterclaims.

75. JC&MS denies the allegations set forth in paragraph 75 of the Counterclaims.

76. JC&MS denies the allegations set forth in paragraph 76 of the Counterclaims.

77. JC&MS denies the allegations set forth in paragraph 77 of the Counterclaims.

78. JC&MS acknowledges that VTS requests a declaratory judgment that the '076 Patent is invalid, but denies that Defendant is entitled to said relief.

COUNT III (misabeled As Count II)
(DECLARATORY JUDGMENT OF PATENT UNENFORCEABILITY)

79. JC&MS repeats and incorporates herein paragraphs 57 through 78 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

80. JC&MS denies the allegations set forth in paragraph 80 of the Counterclaims.

81. JC&MS acknowledges that VTS requests a declaratory judgment that the '076 Patent is unenforceable, but denies that Defendant is entitled to said relief.

THIRD-PARTY CLAIMS AGAINST ENFORA, INC. and
PREMIER WIRELESS SOLUTIONS, INC.
NATURE OF CLAIMS

82. JC&MS acknowledges that VTS requests the relief set forth in paragraph 82 of the Counterclaims. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 82 of the Counterclaims.

JURISDICTION AND VENUE

83. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 83 of the Counterclaims.

PARTIES

84. Upon information and belief, JC&MS admits to the allegations set forth in paragraph 84 of the Counterclaims.

85. Upon information and belief, JC&MS admits to the allegations set forth in paragraph 85 of the Counterclaims.

86. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 86 of the Counterclaims.

87. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 87 of the Counterclaims.

88. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 88 of the Counterclaims.

89. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 89 of the Counterclaims.

90. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 90 of the Counterclaims.

BACKGROUND

91. Upon information and belief, JC&MS admits that VTS provides real-time vehicle tracking to its customers. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the remaining allegations set forth in paragraph 91 of the Counterclaims.

92. JC&MS admits to having filed an Amended Complaint in this action alleging that VTS infringes the '076 Patent and that VTS raised in its Answer the defenses on non-infringement, invalidity, and unenforceability of the '076 Patent, but denies the allegations raised in said defenses.

93. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 93 of the Counterclaims.

94. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 94 of the Counterclaims.

95. Upon information and belief, JC&MS admits that VTS offers to the public its Silent Passenger System which enables fleet owners to track individual trucks in a fleet owner's fleet. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the remaining allegations set forth in paragraph 95 of the Counterclaims.

96. Upon information and belief, JC&MS admits that VTS offers to the public its Silent Passenger System which enables fleet owners to track individual trucks in a fleet owner's fleet. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the remaining allegations set forth in paragraph 96 of the Counterclaims.

97. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 97 of the Counterclaims.

98. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 98 of the Counterclaims.

99. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 99 of the Counterclaims.

THIRD-PARTY CLAIM COUNT I
BREACH OF IMPLIED WARRANTY

100. JC&MS repeats and incorporates herein paragraphs 57 through 99 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

101. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 101 of the Counterclaims.

102. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 102.

103. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 103 of the Counterclaims.

THIRD-PARTY CLAIM COUNT II
BREACH OF INDEMNIFICATION OBLIGATION

104. JC&MS repeats and incorporates herein paragraphs 57 through 103 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

105. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 105.

THIRD-PARTY CLAIM COUNT III (misabeled as II)
CONTRIBUTION

106. JC&MS repeats and incorporates herein paragraphs 57 through 105 of Plaintiff's Answer to Counterclaims as though they were fully set forth herein. In addition, JC&MS repeats and incorporates each of the allegations set forth in its Amended Complaint as though they were fully set forth herein.

107. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 107.

VTS'S PRAYER FOR RELIEF

JC&MS denies that VTS is entitled to the relief requested in subparagraphs 1 through 16 of the "Prayer For Relief" or any other relief with respect to JC&MS. JC&MS lacks personal knowledge or information sufficient to admit or form a belief as to the validity of the remaining

demands with respect to the Third-Party Defendants identified by VTS.

JC&MS'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Each cause of action set forth in VTS's Counterclaims fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

VTS's Counterclaims are barred, in whole or in part, by the equitable defenses of estoppel, waiver, laches and/or unclean hands.

THIRD AFFIRMATIVE DEFENSE

VTS has failed to make reasonable efforts to mitigate its damages, if any.

FOURTH AFFIRMATIVE DEFENSE

VTS's claims are subject to a set off based upon VTS's and/or other parties' acts and wrongdoing.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, JC&MS respectfully demands a jury trial of all issues triable to a jury in this action.

JC&MS'S PRAYER FOR RELIEF

WHEREFORE, JC&MS prays for judgment against VTS as follows:

- A. For judgment dismissing VTS's Counterclaims with prejudice;
- B. For a declaration that this is an exceptional case, and an award to JC&MS of its costs and attorneys' fees incurred herein; and

C. That JC&MS be awarded such other and further relief as the Court may deem just and proper, including all relief requested in JC&MS's Amended Complaint.

Respectfully submitted,

Dated: New York, New York
May 13, 2013

/s/ Maureen V. Abbey
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CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing using the CM/ECF system which will automatically transmit a notification to all counsel of record with the foregoing document information which constitutes service pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Local Rule 5.2.

Dated: May 13, 2013

/s/ Maureen V. Abbey
Maureen V. Abbey